INDEX.

Subject Index.

PAGE

PETITION FOR WRIT OF CERTIORARI 1

Summary Statement of the Matter Involved 2

Reasons Relied on for Allowance of Writ 2

Prayer for Writ 4

BRIEF IN SUPPORT OF PETITION 6

Opinion of the Court Below 6

Jurisdiction 7

Statement of the Case 7

Specification of Errors to Be Urged 7

Argument 7

Conclusion 20

Table of Cases.

PAGE

Atlantic Coast Line Railroad Co. v. Standard Oil Co. of Ky., 275 U. S. 257 14

Binderup v. Pathe Exchange, 263 U. S. 291 13

Blankenship v. Kurfman, 96 Fed. 2d. 875 3

Consolidated Edison Co., et al. v. National Labor Relations Board, et al., 305 U. S. 197 18

Industrial Association of San Francisco, et al., v. United States, 268 U. S. 64 12

Labor Board v. Jones & Laughlin Steel Corp., 301 U. S. 1 ..... 3, 10, 17

N. L. R. B. v. Fainblatt, 306 U. S. 601 ..... 12, 17

N. L. R. B. v. Fruehauf Trailer Co., 301 U. S. 99 17

N. L. R. B. v. Harry Marks Clothing Company, 301 U. S. 58 17

Public Utilities Commission for the State of Kansas v. Landon, 249 U. S. 236 13

S. S. Kresge Co. v. Amsler, 99 Fed. 2d. 503 3

Santa Cruz Co. v. National Labor Relations Board, 303 U. S. 453 ..... 3, 11, 17

Schechter Corp. v. United States, 295 U. S. 495 .... 3, 8, 15

Stafford v. Wallace, 258 U. S. 495 13

Swift & Co. v. United States, 196 U. S. 375 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No.

RUDOLPH AND CHARLES KUDILE, CO-PARTNERS DOING BUSINESS UNDER THE NAME OF KUDILE BROS. HASBROUCK HEIGHTS DAIRY,

Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Rudolph and Charles Kudile, Co-Partners doing business under the name of Kudile Bros. Hasbrouck Heights Dairy, of the Borough of Hasbrouck Heights, Bergen County, in the State of New Jersey, respectfully show that:

A.

Summary Statement of the Matter Involved.

As a result of a complaint issued by the National Labor Relations Board, respondent herein, against the petitioners, under section 10 of the National Labor Relations Act, 29 U. S. C. A., section 151, *et seq.*, the National Labor Relations Board on November 26th, 1940, ordered petitioners to cease and desist from their alleged unfair labor practices, to offer reinstatement with back pay to two employees designated therein, and to post appropriate notices.

Thereafter, the National Labor Relations Board filed its petition for enforcement of the foregoing order in the United States Circuit Court of Appeals for the Third Circuit, pursuant to the provisions of the said National Labor Relations Act, *supra*. Petitioners resisted said petition for enforcement on the ground that they were not engaged in commerce within the meaning of the National Labor Relations Act, section 2 (7), 9 (C), 10 (A) 29 U. S. C. A., section 152 (7), 159 (C), 160 (A), because the produce which they purchase without the State is sold unprocessed entirely within the State of New Jersey.

On the 21st day of August, 1942, said Circuit Court of Appeals for the Third Circuit rendered its opinion enforcing the order hereinabove mentioned (Transcript, pp. 221-222), and on the 9th day of September, 1942, filed a decree enforcing said order (Transcript, pp. 223-224).

B.

Reasons Relied on for Allowance of Writ.

Petitioners contend that they are not engaged in commerce within the meaning of the provisions of the National Labor Relations Act, *supra*, because the produce purchased is sold entirely within the State of New Jersey.

The facts are stated briefly in the opinion (Transcript, pp. 221-222), from which it appears that the petitioners purchase dairy products which are shipped in trucks of an independent contractor to the plant of petitioners in Hasbrouck Heights, New Jersey, from the creamery of the Middletown Milk and Cream Company, located in Slate Hill, New York. Petitioners do not process any of the products but distribute same in bottles in which it is placed by the vendor, to homes for final consumption entirely within the State of New Jersey.

Petitioners respectfully contend that said opinion and decree of the Circuit Court of Appeals for the Third Circuit are in conflict with the following decisions of the United States Supreme Court and other Circuit Courts of Appeals.

In *Schechter Corp.* v. *United States,* 295 U. S. 495, it was held that the federal power over interstate commerce did not extend to the local sale and processing of poultry which had been shipped into New York from other States.

In *Labor Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, *Schechter Corp.* v. *United States, supra,* was affirmed by reference thereto in the opinion. In *Santa Cruz Co.* v. *National Labor Relations Board,* 303 U. S. 453, *Schechter Corp.* v. *United States, supra,* was affirmed by reference thereto in the opinion.

In *S. S. Kresge Co.* v. *Amsler,* 99 Fed. 2d. 503, the United States Circuit Court of Appeals for the Eighth Circuit, held in an opinion affirming the District Court, 99 Fed. 2d. 503, that no interstate commerce under the provisions of the National Labor Relations Act was involved where the plaintiff operated retail 5 and 10c Stores in the State of Missouri, and more than 50% of the merchandise sold therein was shipped into the State of Missouri from without the State.

In *Blankenship* v. *Kurfman,* 96 Fed. 2d. 875, the United States Circuit Court of Appeals for the Seventh Circuit held that interstate commerce under the provisions of the

National Labor Relations Act was not involved where gas sold by a light company was received from without the State and was retailed for local consumption without the State, by industries engaged in the manufacturing of products sold in interstate commerce.

In support of the reasons relied on for allowance of the writ of certiorari, your petitioners submit the accompanying brief which states the argument and the authorities and cases in support thereof.

C.

Prayer for Writ.

Wherefore, petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court for its review and determination, on a certain day to be therein named, a transcript of the record and proceedings herein, and that the decree of the United States Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court, and your petitioners have such further relief in the premises as to this Honorable Court may seem just and meet.

RUDOLPH KUDILE and CHARLES KUDILE,
trading as KUDILE BROS. HASBROUCK HEIGHTS DAIRY,
Petitioners.

ALBERT S. GROSS,
Attorney of Petitioners.

IRWIN MARGULIES,
Of Counsel.

Affidavit of Charles Kudile.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss.:

CHARLES KUDILE, of full age, being duly sworn according to law, upon his oath deposes and says:

That he is one of the partners doing business under the name of Kudile Bros. Hasbrouck Heights Dairy, the petitioners in the foregoing petition named; that he has read the foregoing petition and is familiar with the contents thereof; that the statements therein contained are true except as to those matters alleged to be true, and as to those matters, he believes them to be true.

CHARLES KUDILE.

Sworn and subscribed to before
me this 4th day of November, 1942.

GLADYS MUELLER,
A Notary Public of the State of New Jersey.